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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

MANUEL DEMARIA,

Defendant and Appellant.

H046487

(Monterey County Super Ct.

Nos. SS170209A, SS170245A)

Defendant appeals from orders revoking and reinstating probation in related cases. Appointed counsel filed an opening brief summarizing the cases but raising no issues. In March we wrote to defendant care of the Monterey County jail to inform him of his right to submit written argument on his own behalf. The letter was returned with a notation that defendant was not in custody. Our review of the superior court and county jail websites showed defendant most recently in jail custody since February 25, 2019. We resent our letter to defendant at the jail, and included his booking number in the address window. Defendant received the letter and responded with a letter asking that two of the underlying charges (unlawful possession of ammunition and large capacity magazine activity) either be dismissed or “dropped to a misdemeanor” because he is elderly, a former licensed gun dealer who had owned the ammunition and magazines for more than 45 years, and he wants to retain his federal constitutional rights.

Pursuant to *People v. Wende* (1979) 25 Cal.3d 436 and *People v. Kelly* (2006) 40 Cal.4th 106, we have reviewed the entire record and defendant’s letter and find no

arguable issue for resolution by this court. Following the California Supreme Court's direction in *Kelly*, we provide "a brief description of the facts and procedural history of the case, the crimes of which the defendant was convicted, and the punishment imposed." (*Id.* at p. 110.)

In case No. SS170209A, defendant was charged with possessing methamphetamine for sale (Health & Saf. Code, § 11378; count 1), maintaining a place for selling or using controlled substances (Health & Saf. Code, § 11366; count 2), possessing ammunition by a prohibited person (Pen. Code, § 30305, subd. (a)(1); count 3), and misdemeanor possessing narcotics paraphernalia (Health & Saf. Code, § 11364; count 4), all alleged to have occurred on January 27, 2017. According to the probation report, officers executed a search warrant at defendant's residence and found approximately 30 grams of methamphetamine, five methamphetamine smoking pipes, numerous baggies with remnants of methamphetamine, a digital scale, \$1,900 cash, and 134 rounds of .22-caliber ammunition. Defendant entered a no contest plea to count 1, and the remaining counts were dismissed. Imposition of sentence was suspended for three years, and defendant was placed on formal probation.

In case No. SS170245A, defendant was charged with possessing ammunition by a prohibited person (Pen. Code, § 30305, subd. (a)(1); count 1), unlawful large capacity magazine activity (Pen. Code, § 32310; count 2), and two misdemeanor counts of possessing methamphetamine (Health & Saf. Code, § 11377; counts 3 and 4), all alleged to have occurred on February 3, 2017. The information alleged defendant was on bail when he committed the offenses. According to the probation report, officers executed a second search warrant at defendant's residence. In addition to finding drug paraphernalia and a small amount of methamphetamine, officers found approximately 500 rounds of various caliber ammunition and two 100-round capacity magazines. Defendant had been advised during the earlier search that he was a convicted felon who could not possess ammunition. Defendant pleaded no contest to counts 1 and 2. Counsel explained that

defendant had a prior felony drug conviction that rendered him ineligible to possess firearms or ammunition even though that case had been dismissed under Proposition 36. (Pen. Code, § 1210.1, subd. (e)(1)–(2).) The on bail enhancement was stricken and the misdemeanor counts were dismissed. Imposition of sentence was suspended for three years, defendant was placed on formal probation, and ordered to serve 180 days in county jail.

In January 2018 the probation officer filed notices of probation violations alleging that defendant had twice tested positive for methamphetamine and had failed to surrender himself to the county jail to serve the 180 days. When defendant failed to appear for arraignment on the violation notices, the trial court revoked probation to retain jurisdiction and issued a bench warrant. Defendant was arrested several months later, and admitted the violations in October 2018. In November 2018 the court revoked and reinstated probation on the original terms. In case No. SS170209A, the court ordered defendant to serve an additional 100 days in county jail. In case No. SS170245A, defendant was ordered to serve 365 days in county jail; the court authorized defendant's release to the probation department for placement in a residential drug treatment program, with the jail term suspended during defendant's participation in the program and deemed served if he completed the program.

DISPOSITION

The orders revoking and reinstating probation are affirmed.

Grover, J.

WE CONCUR:

Mihara, Acting P. J.

Danner, J.